

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:04  
PLR-100536-06  
Date: JUNE 16, 2006

Re:

Legend

Taxpayer -  
Trust -  
Year 1 -  
Year 2 -  
Date 1 -  
Date 2 -  
Accounting Firm 1 -  
  
Accounting Firm 2 -

Dear :

This letter is in response to a letter dated December 28, 2005 from your authorized representative requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations and § 2642(g) of the Internal Revenue Code to make an election out of the automatic allocation of generation-skipping transfer (GST) tax under § 2632(c)(5)(A)(i).

The facts and representations submitted are summarized as follows:

On Date 1 in Year 1, Taxpayer established and funded Trust, a grantor retained annuity trust, under which Taxpayer's retained interest would terminate on Date 2. Taxpayer survived the term. Under the terms of Trust, there is a possibility that a generation-

skipping transfer (GST) may occur. The estate tax inclusion period with respect to Taxpayer's transfer to Trust closed for GST purposes on Date 2 in Year 2, the year that Taxpayer's retained interest in Trust terminated.

Taxpayer reported the transfer to Trust on a timely filed Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. The Form 709 for Year 1 was prepared by Accounting Firm 1. Taxpayer claimed a GST exemption for other GST transfers on the gift tax return for Year 1 but did not claim an exemption for the transfer to Trust. Taxpayer has represented that his intention, based on the advice from the law firm in planning the transaction, was to make the election out of the automatic allocation pursuant to § 2632(c)(5)(A)(i)(II). However, Accounting Firm 1 inadvertently failed to realize that, under § 2632(c)(5)(B), a written election out of the automatic allocation of the GST exemption was required to be filed on Taxpayer's Form 709.

On Date 2 in Year 2, when Taxpayer's retained interest in Trust terminated, Taxpayer retained Accounting Firm 2 to prepare and file Taxpayer's Form 709 for Year 2. Accounting Firm 2 failed to make the written election out of the automatic allocation of the GST exemption under § 2632(c)(5)(A)(i)(II) on Taxpayer's Form 709 for Year 2.

Taxpayer requests an extension of time under § 301.9100 with respect to transfers to Trust in Year 1 to make the election out of automatic allocation pursuant to § 2632(c)(5)(A)(i)(II) and that the election is effective as of Date 2, the close of the estate tax inclusion period pursuant to the terms of Trust.

Section 2601 imposes a tax on every generation-skipping transfer (GST). A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(c)(1) provides that if any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(c)(3)(A) provides that for purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust, as determined in § 2632(c)(3)(B)(i).

Section 2632(c)(4) provides that, for purposes of the automatic allocation rules to GST trusts, an indirect skip to which § 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period (ETIP) and the fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

Section 26.2632-1(c)(3)(ii) of the Generation-Skipping Transfer Tax Regulations provides, in pertinent part, that an ETIP terminates at the time at which no portion of the property is includible in the transferor's gross estate (other than by reason of § 2035).

Section 2632(c)(5)(A)(i)(II) provides that an individual may elect to have this subsection not apply to any or all transfers made by such individual to a particular trust. Section 2632(c)(5)(B)(ii) provides that the election may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

Section 2642(f)(1) provides that, for purposes of determining the GST tax, when an individual makes an inter vivos transfer and the value of the property would have been includible in the individual's gross estate if the individual died after making the transfer (other than by reason of § 2035), any GST exemption allocation to the property will not be made before the close of the ETIP.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides, in part, that under § 2642(g)(1)(B), the time for electing out of the automatic allocation rules is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an election described in § 2632(c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in §§ 2642(b)(1) or (b)(2) or an election described in §§ 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

We conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the date of this letter to make the election out of the automatic allocation of GST under § 2632(c)(5)(A)(i)(II) for the transfers to Trust in Year 1 that are effective on Date 2 at the termination of the estate tax inclusion period.

The election should be made on Supplemental Forms 709 filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the Form 709. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter